

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SHAWNLEE CONSTRUCTION, LLC,

Case No.: 7:12-cv-3346

Plaintiff,

- against -

ANSWER TO SECOND
AMENDED VERIFIED
COMPLAINT

J.K. SCANLAN COMPANY, INC. and ARCH
INSURANCE COMPANY,

Defendants.

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Defendant Arch Insurance Company (“Arch”), by its attorneys, Torre, Lentz,
Gamell, Gary & Rittmaster, LLP, for its answer to plaintiff’s second amended verified
complaint herein, alleges as follows:

AS TO NATURE OF THE ACTION

1. Denies the allegations set forth in in paragraph 1 of the second amended
verified complaint.

AS TO THE PARTIES

2. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations contained in paragraph 2 of the second amended verified complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth
of the allegations contained in paragraph 3 of the second amended verified complaint.

4. Denies the allegations set forth in in paragraph 4 of the second amended verified complaint, except admits Arch is a corporation organized and existing under the laws of Missouri and is licensed to issue surety bonds in New York.

AS TO JURISDICTION AND VENUE

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the second amended verified complaint.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the second amended verified complaint.

AS TO FIRST COUNT
(Breach of Contract against Scanlan)

7. Repeats and realleges each and every allegation contained in paragraphs 1 through 6 above as if set forth at length.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the second amended verified complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the second amended verified complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the second amended verified complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the second amended verified complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the second amended verified complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the second amended verified complaint.

AS TO SECOND COUNT
(Account Stated Against Scanlan)

14. Repeats and realleges each and every allegation contained in paragraphs 1 through 13 above as if set forth at length.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the second amended verified complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the second amended verified complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the second amended verified complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the second amended verified complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19

AS TO THIRD COUNT
(Quantum Meruit Against Scanlan)

20. Repeats and realleges each and every allegation contained in paragraphs 1 through 19 above as if set forth at length.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the second amended verified complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the second amended verified complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the second amended verified complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the second amended verified complaint.

AS TO FOURTH COUNT

(Payment under Surety Bond Against Scanlan and Arch)

25. Repeats and realleges each and every allegation contained in paragraphs 1 through 24 above as if set forth at length.

26. Denies the allegations set forth in in paragraph 26 of the second amended verified complaint, except admits that Arch issued Bond No. SU1039918 and refers to said bond for its terms and conditions.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the second amended verified complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the second amended verified complaint.

29. Denies the allegations set forth in in paragraph 29 of the second amended verified complaint, except refers to the unidentified writing for its terms and import.

30. Denies the allegations set forth in in paragraph 30 of the second amended verified complaint.

31. Denies the allegations set forth in in paragraph 31 of the second amended verified complaint.

32. Denies the allegations set forth in in paragraph 32 of the second amended verified complaint.

33. Denies the allegations set forth in in paragraph 33 of the second amended verified complaint.

AS AND FOR A FIRST DEFENSE

34. Plaintiff's second amended verified complaint against Arch, or portions thereof, fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

35. Plaintiff's second amended verified complaint is barred by the applicable contractual statute of limitations period.

AS AND FOR A THIRD DEFENSE

36. Plaintiff's second amended verified complaint is barred because plaintiff failed to comply with a condition precedent to the commencement of this action, in that plaintiff failed to commence this action within one year following the date on which the subject bond's principal, J.K. Scanlan Company, Inc. ("JKS"), ceased work under the bonded contract.

AS AND FOR A FOURTH DEFENSE

37. The sums demanded by plaintiff in the second amended verified complaint, in whole or in part, are not properly recoverable under, or within the scope of coverage of, the subject bond.

AS AND FOR A FIFTH DEFENSE

38. The claims set forth in the second amended verified complaint are barred, in whole or in part, by the doctrine of waiver, estoppel, release and/or laches.

AS AND FOR A SIXTH DEFENSE

39. Arch hereby adopts and incorporates any defenses, claims and/or credits that the subject bond's principal, JKS, has or may have against plaintiff.

WHEREFORE, defendant Arch demands judgment dismissing the second amended verified complaint against it together with costs and disbursements, and for such other and further relief that the Court may deem just and proper.

Dated: Jericho, New York
November 5, 2012

TORRE, LENTZ, GAMELL,
GARY & RITTMASER, LLP
Attorneys for Defendant
Arch Insurance Company

By: /s/ Lawrence S. Novak
Lawrence S. Novak

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VERIFICATION

LAWRENCE S. NOVAK, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms, upon information and belief, the truth of the following:

1. I am a partner in the firm of Torre, Lentz, Gamell, Gary & Rittmaster, LLP, attorneys for defendant, Arch Insurance Company, in the captioned action.
2. I have read the foregoing Answer to the Third Amended Verified Complaint, know the contents thereof, and know that the contents are true to my own knowledge, except as to matters stated therein to be upon information and belief, which matters I believe to be true.
3. The sources of my information and the grounds of my belief as to those matters alleged upon information and belief in the foregoing Answer to the Third Amended Verified Complaint are communications with said defendant.
4. This verification is made by me and not by the above-named defendant, because said defendant does not have an office and place of business in the county where its attorneys have their office.

Dated: Jericho, New York
November 5, 2012

/s/ Lawrence S. Novak
Lawrence S. Novak